IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 47 of 1988
WITH
INCOME TAX REFERENCE No 156 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

CHANDRAKANT C SHAH

Appearance:
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/10/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In both these references, the Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinon of this Court at the instance of the revenue. The assessment years are 1979-80 and 1980-81 :

"Whether, the Appellate Tribunal is right in law and on facts in confirming the view taken by the AAC that only 50% of share out of 60% from M/s.Sonya Ceramics was liable to be taxed in the hands of the assessee-HUF?"

2 The relevant accounting periods are accounting years 1978 and 1979 respectively. The assessee is an HUF of Shri Chandrakant C.Shah and Karta of Rupesh Chandrakant Shah became partner on behalf of assessee HUF in the firm of M/s.Sonya Ceramics with 60 paise share in the said partnership firm. The members of the assessee HUF created a trust for the benefit of minor children in the name of Janki Children Trust. The trust deed was executed on 18/12/1978. The settlor being karta of the assessee HUF had handed over a cheque. Further, 30 paise out of 60 paise share in the said partnership was also settled in Trust for the benefit of minor children.

3 The assessee claimed in its return of income that 50% of the share in the partnership firm stood diverted by overriding title in favour of Janki Children Trust and hence the assessee HUF was liable to return only 50% of the 60 paise share in the partnership firm. The Income Tax Officer negatived the claim of the assessee. However, the AAC relied upon the decision of this Court in the case of C.I.T. vs. Nandiniben Narottamdas, 140 ITR 16 and the Tribunal upheld the order of the appellate authority.

4 We have heard Mr.B.B.Nayak, learned Counsel for the applicant-revenue. Though served none appears for the respondent-assessee.

5 In light of the decision of this Court in the case of Nandiniben Narottamdas (Supra) as well as in the case of Sunil Kinariwala vs. C.I.T., 211 ITR 127, we find no good reason to take a different view. The Tribunal was right in law in holding that only 50% of share out of 60 paise share in M/s.Sonya Ceramics was liable to be taxed in hands of the assessee HUF and not the entire 60% share in the said firm.

6 The question referred to us is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

7 Both the references are accordingly disposed of with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt